80-16

Supreme Court, U. S.
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IN THE
Supreme Court of the United States

October Term 1980

No. 80-16

LAKESIDE POULTRY RANCH, INC., et al.

Petitioners,

v.

TIM WALLACE, Director of the Department of Food and Agriculture of the State of California, et al.

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit (not certified for publication) appears as Exhibit "A" to the Appendix of the petition (Pet. App. A 21- A 28). The Order

Granting Summary Judgment, Judgment, and Amended Judgment (unreported) is attached as Exhibit B to the Appendix of the petition (Pet. App. B 30- B 34).

QUESTIONS PRESENTED

Whether the petitioners' claim under 42 U.S.C. 1983 was correctly dismissed for lack of jurisdiction on the ground that Egg and Poultry Quality Control Inspector Prather acted pursuant to federal and not state law?

Whether the fact that a state employee acting under color of federal law may be entitled to a qualified immunity is a proper subject to be disposed of by summary judgment?

Whether the trial court had jurisdiction to consider petitioners' cause of action for a declaratory judgment regarding the constitutionality of the Egg Products Inspection Act?

JURISDICTION

The judgment of the U.S. Court of Appeals for the Ninth Circuit was entered on April 7, 1980. The petition for writ of certiorari was filed on July 7, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This action was originally brought in the Superior Court of the

State of California for San Diego County by petitioners Lakeside Poultry Ranch, Inc. and Florian and Stella Brzezinski in an attempt to preclude the enforcement of the federal Egg Products Inspection Act by Egg and Poultry Quality Control Inspector Russell W. Prather at Lakeside Poultry Ranch in Lakeside, California. On September 1, 1976, the action was removed by the United States Attorney for the Southern District of California pursuant to 28 U.S.C. 1442(a)(1).

Pursuant to a cooperative agreement between the United States and California, authorized under 21 U.S.C. 1038, respondent Prather was employed by the State of California to enforce the provisions of the federal Egg Products Inspection Act at petitioners' place of business, Lakeside Poultry Ranch. Petitioners sought a declaration that the federal Egg Products Inspection Act is unconstitutional and that petitioners were entitled to an appeal of inspection decisions under procedures set forth in the Act. Petitioners also sought damages under 42 U.S.C. sections 1983 and 1985 as a result of the fact that, under the cooperative program, Inspector Prather cited petitioners for various violations of the federal act and, based on these violations, withheld approval of certain egg products processed by petitioners.

On February 10, 1978, respondents Prather and Wallace and the named federal respondents filed a motion for summary judgment on the grounds that there were no material issues of fact with regard to the existence of a

conspiracy among respondents, that respondents acted under color of federal and not state law, and that the court had no jurisdiction to grant a declaratory judgment.

The District Court granted summary judgment to respondents on petitioners' claim brought under 42 U.S.C. 1985, finding that petitioners failed to demonstrate that there was a genuine issue as to whether there was a conspiracy among respondents. (Pet. App. A 21-A 27.) The Court also found that petitioners failed to state a claim under 42 U.S.C. 1983 since respondents acted under color of federal and not state law. (Pet. App. A 27.) Since the Court dismissed petitioners' 1983 and 1985 damage claims it also found that it lacked jurisdiction to rule on petitioners' constitutional challenge to the federal Egg Products Inspection Act. (Pet. App. A 28.) The Court of Appeals affirmed. (Pet. App. B 29-B 36.)

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

No special or important reasons as to why this Honorable Court should grant a writ of certiorari have been presented by petitioners as required by Rule 17. The decision of the Court of Appeals, affirming the judgment of the District Court, was entirely correct and is not in conflict with any decision of another Court of Appeals or of this Court.

1. The District Court correctly dismissed petitioners' claim under 42 U.S.C. 1983 on the ground that Inspector Prather acted pursuant to federal and not state law.

Petitioners state that there existed ". . . a cooperative agreement between the State of California and the United States Department of Agriculture involving a voluntary inspection program under the Egg Products Inspection Act." (Pet. 9.)

It should be noted that there is and was no cooperative agreement between the State of California and the United States Department of Agriculture relating to any voluntary inspection program under the Egg Products Inspection Act. The Egg Products Inspection Act (21 U.S.C. 1031 et seq.) contains no provisions governing a voluntary inspection program but imposes mandatory inspection requirements on egg handlers.

Petitioners cite Title 3, California Administrative Code, sections 1358.4 et seq. and argue that these provisions govern state financing of the administration of a voluntary inspection program and were the state regulations that Prather was allegedly improperly enforcing (Pet. 9-11). However, these cited provisions relate only to an industry-financed, inspection program for shell eggs not to be broken at an egg processing plant. Prather had no involvement with and no enforcement responsibilities with regard to inspecting shell eggs not to be broken at an egg processing plant.

On the contrary, Prather was enforcing a federally financed, mandatory inspection program under the federal Egg Products Inspection Act to assure compliance by petitioners with respect to eggs to be broken at Lakeside Poultry Ranch and processed at this plant as egg products. Prather's salary, benefits, expenses, and the entire cost of the program were financed not by the state, nor by industry, but by the federal government pursuant to 21 U.S.C. 1053. Therefore the regulations cited by petitioners have no applicability to the instant case.

Moreover, no provision of state law governed the inspection of egg products at the time Prather was assigned to the Lakeside Poultry Ranch. Pursuant to 21 U.S.C. 1052 the State of California was prohibited from enacting or enforcing additional or different requirements from applicable federal requirements in this area. Sections 27951 through 28141, inclusive, of the California Agricultural Code governed egg products prior to 1971, but those sections were repealed in their entirety in 1971 1/ after the enactment by Congress of the federal Egg Products Inspection Act. Since Prather was not assigned to the Lakeside Poultry Ranch until 1976, the conclusion necessarily follows that state law did not even govern the inspection of egg products at the time of his assignment. Thus Prather's inspections could not have been performed under color of state law.

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1. Repealed by Stats. 1971, Ch. 292, section 1, effective July 8, 1971.

Petitioners concede that Prather was enforcing federal law. (Pet. 10.) The Court of Appeals for the Ninth Circuit specifically noted that his connections with the federal government were significant.2/ The employment of Prather by the state to enforce federal law is the only connection between Prather and the state in this case. This connection by itself is not sufficient to support a conclusion that the state or its officials played a significant role in this case.

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2. As the Court observed:

> "Plaintiff argues that this situation is analogous to Green v. Dumke, 480 F.2d 624 (9th Cir. 1973), holding that a state college which discriminated in dispersing federal financial benefits had acted under color of state law. Unlike the college in Green, Prather's only connection with the state was that his check was drawn from the state treasury. His connections with the federal government are significant. United States Department of Agriculture officials closely supervised him, the statutes and regulations he applied were federal, and the federal government reimbursed the state treasury for his salary, 21 U.S.C. 1053 (a)." (Pet. App. B 31.)

In Askew v. Bloemker (7th Cir. 1976) 548 Fed.2d 673 the Court of Appeal held that although three defendants remained Municipal Police Department employees during their assignment to a federal agency, since all defendants were acting pursuant to federal authority and not under color of any state law, no claim existed under 42 U.S.C. 1983. Thus, under Askew, supra, the mere fact that Prather remained a state employee during his assignment to enforce federal law would not support a claim under 42 U.S.C. 1983.

The District Court validly concluded that at the time Inspector Prather carried out his official duties he acted pursuant to the provisions of the federal Egg Products Inspection Act. The District Court therefore correctly dismissed petitioners' claim under 42 U.S.C. 1983 for lack of jurisdiction. No claim lies under section 1983 for actions taken under color of federal law. District of Columbia v. Carter (1973) 409 U.S. 418.

2. Although technically a state employee Prather acted under color of federal law when inspecting eggs at Lakeside Poultry Ranch and thus acted in the course of his official duties under the Egg Products Inspection Act at all times relevant to this case. State employees acting under color of federal law are entitled to a qualified immunity protecting them from liability for mistakes in judgment, whether of law or fact, when acting in their official sphere of responsibility. Butz v. Economou (1978) 438 U.S. 478.

Prather's good faith and belief that the enforcement actions he took was appropriate were based on reasonable grounds, i.e., his informed use of the Regulations Governing The Inspection Of Eggs And Egg Products (7 C.F.R. 59) and his use of the Egg Products Inspector's Handbook, both of which guided his actions as an inspector. Therefore, he was entitled to a qualified immunity protecting him from liability for acts done in the course of his official duties. Scheuer v. Rhodes (1974) 416 U.S. 232.

Both Scheuer, supra, and Butz, supra, support an order of summary judgment when no issues of fact exist on the question of immunity. Although the extent of the immunity depends on questions of fact, summary judgment is appropriate where the uncontroverted facts show that the officials were acting within the scope of their official duties. Otherwise officials would be required to defend frivolous suits and be distracted from performing their official responsibilities. The District Court validly found that "Defendants' affidavits and correspondence suggest that defendants were properly performing their duties." (Pet. App. A 22.) Because no issues of fact existed on the question of immunity the District Court correctly granted summary judgment to respondents in this case.

3. The District Court correctly refused to consider petitioners' constitutional challenge to the federal Egg Products Inspection Act. Relief was sought by way of declaratory judgment.

The Court of Appeals for the Ninth Circuit correctly concluded that a proceeding under the Declaratory Judgment Act, 28 U.S.C. 2201, affords no jurisdiction for the court to consider an issue when no question otherwise exists as a basis for conferring jurisdiction. (Pet. App. B 33.) All of the claims of petitioner were determined by the trial court to be without substance and were disposed of by summary judgment. Petitioner had incorporated its cause of action for declaratory judgment in the ground set forth in the first cause of action under 42 U.S.C. 1983. Since the first cause of action had been dismissed, the trial court was without jurisdiction to consider petitioners' cause of action for declaratory judgment.

Further, the trial court also correctly observed that petitioner had brought a separate forfeiture action concerning the same eggs which were the subject of this litigation (Pet. App. A 28). Since the question of the constitutionality of the federal Egg Product Inspection Act had been unsuccessfully raised by petitioners in the forfeiture action, the trial court correctly concluded that there was no reason to consider this issue twice.

* * *

CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

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